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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA AT ANCHORAGE**

ENOCH ADAMS, JR., LEROY ADAMS,
ANDREW KOENIG, JERRY NORTON
DAVID SWAN and JOSEPH SWAN,

Plaintiffs,

v.

TECK COMINCO ALASKA INCORPORATED

Defendant.

NANA REGIONAL CORPORATION and
NORTHWEST ARCTIC BOROUGH,

Intervenors-Defendants.

Case No. A04-49 (JWS)

PLAINTIFFS' RESPONSE TO
TECK COMINCO'S FIFTH
DISCOVERY REQUEST
TO ENOCH ADAMS, JR.

1 In addition, plaintiffs may rely on:

2 • Any document referenced in any of the expert declarations plaintiffs or defendants have
3 submitted in this case.

4 • Any documents produced by Teck Cominco in response to discovery in this case.
5

6 **REQUEST FOR ADMISSION NO. 39:** Please admit that none of the violations alleged in the
7 Fourth Claim of the Complaint has caused any of the changes in the location and quantity of
8 terrestrial mammals, marine mammals and fish alleged in paragraphs 6 of the Complaint.

9 **RESPONSE:**

10 Denied. Plaintiffs believe they have.
11

12 **REQUEST FOR PRODUCTION NO. 118:** If your response to Request for Admission No. 39
13 above was anything other than an unqualified admission, please produce all documents which refer
14 or relate to any fact upon which your response was based.

15 **RESPONSE:**

16 The following documents are available for inspection at the law offices of the Center on
17 Race, Poverty & the Environment, 450 Geary Street, Suite 500, San Francisco, CA 94102, and, at
18 Teck Cominco's request and expense, the documents may be copied:

19 • The Mine Site Violation DMRs;
20 • The Exceedance Letters;
21 • The Baseline Study;
22 • The Lab Reports;
23 • The Steckoll Study;
24 • The Biomonitoring Reports, including but not limited to Environment Consultants,
25 North Vancouver BC, "Effects of Total Dissolved Solids (TDS) on Fertilization and Viability of
26 Rainbow Trout and Chum Salmon Embryos" and Scannell, Phyllis, et al., Aquatic Taxa
27 monitoring Study at Red Dog Mine, 1997-1998, 11/99.
28

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• The Complaint and Consent Decree in *United States v. Cominco Alaska Incorporated*, No. A97-267-CV (JKS).

• The Expert Declaration of Ken Fucik and documents referenced therein and the Expert Rebuttal Report of Ken Fucik and documents referenced therein.

• The Expert Declaration of Robert Moran and documents referenced therein; and the Expert Rebuttal Report of Robert Moran and documents referenced therein and attached thereto.

• The Expert Report of Kevin Brix and documents referenced therein; the Rebuttal Report of Kevin Brix and documents referenced therein; and the Supplemental Report of Kevin Brix and documents referenced therein.

• Plaintiff's Motion for Summary Judgment and supporting documents in *Kivalina Relocation Planning Committee v. Teck Cominco Alaska Incorporated*, No. A02-23 I CV(JWS), filed April 28, 2003.

• Environment Consultants, North Vancouver BC, "Effects of Total Dissolved Solids (TDS) on Fertilization and Viability of Rainbow Trout and Cum Salmon Embryos."

• Brown, VM, "The Acute Toxicity to Rainbow Trout of Fluctuating Concentrations and Mixtures of Ammonia, Phenol and Zinc, *Journal of Fish Biology*, v. I, pp.¹ -90 1969.

• Evangelou, V.P., *Environmental Soil and Water chemistry Principles and Applications*, Wiley-Interscience Publication, New York 1998.

• Hawker, D.H., "Bioaccumulation of Metallic Substances and Organometallic Compounds," *Bioaccumulation of Xenobiotic Compounds*, CRC Press, Boca Raton, 1990.

In addition, plaintiffs may rely on:

• Any document referenced in any of the expert declarations plaintiffs or defendants have submitted in this case.

• Any documents produced by Teck Cominco in response to discovery in this case.

REQUEST FOR ADMISSION NO. 40: Please admit that none of the violations alleged in the Fourth Claim of the Complaint caused an excursion above the State of Alaska drinking water

1 in the future.

2
3 **INTERROGATORY NO. 6:** If your response to the preceding Request for Admission was
4 anything other than an unqualified admission, please state each and every fact which support or
5 tends to support your response.

6 **RESPONSE:**

- 7 1. Teck Cominco has had cadmium violations at the mine site for more than a decade.
8 2. Teck Cominco's excuses for violating its cadmium permit limitations – including but
9 not limited to human, laboratory and software error – are all types of error which can easily recur.
10 3. Plaintiffs' experts believe, based on their many years of experience at mine sites, that
11 such violations will occur in the future.

12
13 **REQUEST FOR PRODUCTION NO. 120** Please produce each and every document which
14 contains any fact that supports or tends to support your response to the preceding Request for
15 Admission.

16 **RESPONSE:**

17 The following documents are available for inspection at the law offices of the Center on
18 Race, Poverty & the Environment, 450 Geary Street, Suite 500, San Francisco, CA 94102, and, at
19 Teck Cominco's request and expense, the documents may be copied:

- 20 • The Mine Site Violation DMRs;
21 • The Exceedance Letters;
22 • The Lab Reports;
23 • The Complaint and Consent Decree in *United States v. Cominco Alaska Incorporated*,
24 No. A97-267-CV (JKS).
25 • The Expert Declaration of Ken Fucik and documents referenced therein and the Expert
26 Rebuttal Report of Ken Fucik and documents referenced therein.
27 • The Expert Declaration of Robert Moran and documents referenced therein; and the
28

1 Expert Rebuttal Report of Robert Moran and documents referenced therein and attached thereto.

2 • Plaintiff's Motion for Summary Judgment and supporting documents in *Kivalina*
3 *Relocation Planning Committee v. Teck Cominco Alaska Incorporated*, No. A02-23 I CV(JWS),
4 filed April 28, 2003, and Teck Cominco's responsive briefs.

5 • The Transcripts of the Depositions of Enoch Adams, Leroy Adams, Andrew Koenig,
6 Jerry Norton and Joseph Swan, July 2003.

7
8 **F. DISCHARGES TO TUNDRA [FIFTH CLAIM]**

9 **REQUEST FOR ADMISSION NO. 42:** Please admit that you were not harmed by any violation
10 of Condition I(C)(2) of the Mine NPDES permit alleged in the Fifth Claim of the Complaint.

11 **RESPONSE:**

12 Denied. It is an injury to me when my environment is despoiled.

13
14 **REQUEST FOR PRODUCTION NO. 121:** If your response to Request for Admission No. 42
15 above was anything other than an unqualified admission, please produce all documents which refer
16 or relate to any fact relied upon by you in forming your response.

17 **RESPONSE:**

18 The following documents are available for inspection at the law offices of the Center on
19 Race, Poverty & the Environment, 450 Geary Street, Suite 500, San Francisco, CA 94102, and, at
20 Teck Cominco's request and expense, the documents may be copied:

21 • The Mine Site Violation DMRs;
22 • The Exceedance Letters;
23 • The Lab Reports;
24 • The Baseline Study;
25 • The Complaint and Consent Decree in *United States v. Cominco Alaska Incorporated*, No.
26 A97-267-CV (JKS).

27 • Plaintiff's Motion for Summary Judgment and supporting documents in *Kivalina*

1 *Relocation Planning Committee v. Teck Cominco Alaska Incorporated*, No. A02-23 I CV(JWS),
2 filed April 28, 2003, and Teck Cominco's responsive briefs.

3 • The Transcripts of the Depositions of Enoch Adams, Leroy Adams, Andrew Koenig, Jerry
4 Norton and Joseph Swan, July 2003.

5
6 **REQUEST FOR ADMISSION NO. 43:** Please admit that you do not have any scientific report,
7 study, or other independent, verifiable and documented evidence of any harm to any plant, fish or
8 animal caused by any violation alleged in Count 5 of the Complaint.

9 **RESPONSE:**

10 Denied. Plaintiffs do.

11
12 **REQUEST FOR PRODUCTION NO. 122:** If your response to Request for Admission No. 43
13 above was anything other than an unqualified admission, please produce all documents which refer
14 or relate to any fact upon which your response was based.

15 **RESPONSE:**

16 The following documents are available for inspection at the law offices of the Center on
17 Race, Poverty & the Environment, 450 Geary Street, Suite 500, San Francisco, CA 94102, and, at
18 Teck Cominco's request and expense, the documents may be copied:

19 • The Mine Site Violation DMRs;
20 • The Exceedance Letters;
21 • The Baseline Study;
22 • The Complaint and Consent Decree in *United States v. Cominco Alaska Incorporated*, No.
23 A97-267-CV (JKS).

24 • Plaintiff's Motion for Summary Judgment and supporting documents in *Kivalina*
25 *Relocation Planning Committee v. Teck Cominco Alaska Incorporated*, No. A02-23 I CV(JWS),
26 filed April 28, 2003, and Teck Cominco's responsive briefs.

27 • The Transcripts of the Depositions of Enoch Adams, Leroy Adams, Andrew Koenig, Jerry
28

1 Norton and Joseph Swan, July 2003.

2
3 **REQUEST FOR ADMISSION NO. 44:** Please admit that none of the violations alleged in the
4 Fifth Claim of the Complaint has caused any of the changes in the location and quantity of terrestrial
5 mammals, marine mammals and fish alleged in paragraphs 6 or 11 of the Complaint.

6 **RESPONSE:**

7 Denied. Plaintiffs believe they have.

8
9 **REQUEST FOR PRODUCTION NO. 123:** If your response to Request for Admission No. 44
10 above was anything other than an unqualified admission, please produce all documents which refer
11 or relate to any fact upon which your response was based.

12 **RESPONSE:**

13 The following documents are available for inspection at the law offices of the Center on
14 Race, Poverty & the Environment, 450 Geary Street, Suite 500, San Francisco, CA 94102, and, at
15 Teck Cominco's request and expense, the documents may be copied:

- 16 • The Mine Site Violation DMRs;
17 • The Exceedance Letters;
18 • The Baseline Study;
19 • The Complaint and Consent Decree in *United States v. Cominco Alaska Incorporated*,
20 No. A97-267-CV (JKS).

- 21 • Plaintiff's Motion for Summary Judgment and supporting documents in *Kivalina*
22 *Relocation Planning Committee v. Teck Cominco Alaska Incorporated*, No. A02-23 I CV(JWS),
23 filed April 28, 2003, and Teck Cominco's responsive briefs.

24
25 **REQUEST FOR ADMISSION NO. 45:** Please admit that none of the violations alleged in the
26 Fifth Claim of the Complaint caused an excursion above the State of Alaska drinking water criterion
27 in any drinking water consumed by you during the time period relevant to this Complaint.

1 physical injury by any violation of the Port Site permit alleged in the Seventh Claim of the
 2 Complaint to prove any element of its lawsuit, and thus the RFA and RFP are not seeking to
 3 discover relevant information. They are unduly burdensome and impossible to answer because
 4 any disease, illness or physical injury caused by the violations could take years to manifest.

5
 6 **REQUEST FOR ADMISSION NO. 51:** Please admit that you do not have any scientific report,
 7 study, or other independent, verifiable and documented evidence of any harm caused to any plants,
 8 fish or animals by any of the unpermitted discharges alleged in the Seventh Claim of the Complaint.

9 **RESPONSE:**

10 Denied. Plaintiffs do.

11
 12 **REQUEST FOR PRODUCTION NO. 130:** If your response to Request for Admission No. 51
 13 above was anything other than an unqualified admission, please produce all documents which refer
 14 or relate to any fact upon which your response was based.

15 **RESPONSE:**

16 The following documents may be inspected on reasonable notice at the offices of the
 17 Center on Race, Poverty & the Environment, 450 Geary Street, Suite 500, San Francisco,
 18 California 94102, and, at Teck Cominco's request and expense, the documents may be copied.

- 19 • Port Site Violation DMRs.
- 20 • Exceedance Letters.
- 21 • Lab Reports.
- 22 • The Baseline Study.
- 23 • The Complaint and Consent Decree in *United States v. Cominco Alaska Incorporated*,
 24 No. A97-267-CV (JKS).
- 25 • Plaintiff's Motion for Summary Judgment and supporting documents in *Kivalina*
 26 *Relocation Planning Committee v. Teck Cominco Alaska Incorporated*, No. A02-231 CV(JWS),
 27 filed April 28, 2003, and Teck Cominco's responsive briefs.

REQUEST FOR ADMISSION NO. 52: Please admit that none of the violations alleged in the Seventh Claim of the Complaint has caused any of the changes in the location and quantity of terrestrial mammals, marine mammals and fish alleged in paragraphs 6 or 11 of the Complaint.

RESPONSE:

Denied. Plaintiffs believe they might have.

REQUEST FOR PRODUCTION NO. 131: If your response to Request for Admission No. 52 above was anything other than an unqualified admission, please produce all documents which refer or relate to any fact upon which your response was based.

RESPONSE:

The following documents may be inspected on reasonable notice at the offices of the Center on Race, Poverty & the Environment, 450 Geary Street, Suite 500, San Francisco, California 94102, and, at Teck Cominco's request and expense, the documents may be copied.

- Port Site Violation DMRs.
- Exceedance Letters.
- Lab Reports.
- The Baseline Study.
- The Complaint and Consent Decree in *United States v. Cominco Alaska Incorporated*, No. A97-267-CV (JKS).
- Plaintiff's Motion for Summary Judgment and supporting documents in *Kivalina Relocation Planning Committee v. Teck Cominco Alaska Incorporated*, No. A02-23 I CV(JWS), filed April 28, 2003, and Teck Cominco's responsive briefs.
- Norman Chance, Inupiat of Arctic Alaska.
- The Transcripts of the Depositions of Enoch Adams, Leroy Adams, Andrew Koenig, Jerry Norton and Joseph Swan, July 2003.
- Affected Environment Section, written for the Kivalina Village Relocation

Environmental Document (Working Draft, December 10, 2001).

I. TOTAL SUSPENDED SOLIDS (TSS) [EIGHTH CLAIM]

REQUEST FOR ADMISSION NO. 53: Please admit that you did not suffer disease, illness or physical injury caused by violations of Condition I(A)(3) in the Port NPDES permit for total suspended solids alleged in the Eighth Claim of the Complaint.

RESPONSE:

Plaintiffs object to RFA 53 on the grounds of relevance, and that it is unduly burdensome and impossible to answer. Plaintiffs need not show that they suffered any disease, illness or physical injury or were placed in imminent threat of disease, illness or physical injury by any violation of the Port Site permit alleged in the Eighth Claim of the Complaint to prove any element of its lawsuit, and thus the RFA is not seeking to discover relevant information. It is unduly burdensome and impossible to answer because any disease, illness or physical injury caused by the violations could take years to manifest.

REQUEST FOR ADMISSION NO. 54: Please admit that none of the violations alleged in the Eighth Claim of the Complaint has caused any of the changes in the location and quantity of terrestrial mammals, marine mammals and fish alleged in paragraphs 6 or 11 of the Complaint.

RESPONSE:

Denied. Plaintiffs believe they may have.

REQUEST FOR PRODUCTION NO. 132: If your response to Request for Admission No. 54 above was anything other than an unqualified admission, please produce all documents which refer or relate to any fact upon which your response was based.

RESPONSE:

The following documents may be inspected on reasonable notice at the offices of the Center on Race, Poverty & the Environment, 450 Geary Street, Suite 500, San Francisco,

California 94102, and, at Teck Cominco's request and expense, the documents may be copied.

- Port Site Violation DMRs.

- Exceedance Letters.

- Lab Reports.

- The Baseline Study.

- The Complaint and Consent Decree in *United States v. Cominco Alaska Incorporated*, No. A97-267-CV (JKS).

- Plaintiff's Motion for Summary Judgment and supporting documents in *Kivalina Relocation Planning Committee v. Teck Cominco Alaska Incorporated*, No. A02-23 I CV(JWS), filed April 28, 2003, and Teck Cominco's responsive briefs.

- Norman Chance, Inupiat of Arctic Alaska.

- The Transcripts of the Depositions of Enoch Adams, Leroy Adams, Andrew Koenig, Jerry Norton and Joseph Swan, July 2003.

- Affected Environment Section, written for the Kivalina Village Relocation Environmental Document (Working Draft, December 10, 2001).

REQUEST FOR PRODUCTION NO. 133: Please produce all documents which refer or relate to any harm that you allege you suffered as a result of any of the violations alleged in the Eighth Claim of the Complaint.

RESPONSE:

The following documents are available for inspection at the law offices of the Center on Race, Poverty & the Environment, 450 Geary Street, Suite 500, San Francisco, CA 94102, and, at Teck Cominco's request and expense, the documents may be copied:

- The Port Site Violation DMRs;

- The Exceedance Letters;

- The Baseline Study;

- The Lab Reports;

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1 • The Complaint;

2 • The Answer;

3 • Plaintiff's Motion for Summary Judgment and supporting documents in *Kivalina*

4 *Relocation Planning Committee v. Teck Cominco Alaska Incorporated*, No. A02-23 I CV(JWS),

5 filed April 28, 2003, along with Teck Cominco's responsive brief and Teck Cominco's Answers

6 in that case.

7 • The Complaint and Consent Decree in *United States v. Cominco Alaska Incorporated*,

8 No. A97-267-CV (JKS).

9 • Memorandum from Larry Bartlett, Biologist, Corps of Engineers, to Willie Goodwin,

10 November 8, 2000, re: informal summary and discussion of summer wildlife observations at the

11 Red Dog Port. 004038-004042.

12 • Birge, Wesley J., "Toxicity of Sediment-Associated Metals to Freshwater Organisms:

13 Biomonitoring Procedures," in Dickson, Kenneth, Fate and Effects of Sediment-Bound

14 Chemicals in aquatic Systems, Pergamon Press, New York 1984.

15 • Brown, VM, "The Acute Toxicity to Rainbow Trout of Fluctuating Concentrations and

16 Mixtures of Ammonia, Phenol and Zinc, Journal of Fish Biology, v. 1, pp.1-90 1969.

17 • Eisler, R., "Cadmium Poisoning in *Fundulus heseroclitus* (Pisces: Cyprinodontidae)

18 and other Marine Organisms, Journal of the Fisheries Research Board of Canada, v. 28, 1971.

19 • Hawker, D.H., "Bioaccumulation of Metallic Substances and Organometallic

20 Compounds," Bioaccumulation of Xenobiotic Compounds, CRC Press, Boca Raton, 1990.

21 • LaVelle, J.M., "Bioavailability of Lead in Mining Water: An Oral Intubation Study in

22 Young Swine," Chemical Speciation and Bioavailability, v. 3, issues 3/4, Dec. 1991.

23 • Mason, Christopher, Biology of Freshwater Pollution, 4th edition, Pearson Education

24 Limited, London, 2002.

25 • Otitoloju, A.A., "Relevance of joint action toxicity evaluations in setting realistic

26 environmental safe limits of heavy metals," Journal of Environmental Management v.67, p.121-

27 8, 2003.

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- 1 • Norman Chance, Inupiat of Arctic Alaska.
- 2 • The Transcripts of the Depositions of Enoch Adams, Leroy Adams, Andrew Koenig,
- 3 Jerry Norton and Joseph Swan, July 2003.
- 4 • Affected Environment Section, written for the Kivalina Village Relocation
- 5 Environmental Document (Working Draft, December 10, 2001).

6

7 **REQUEST FOR ADMISSION NO. 55:** Please admit that you do not have any scientific

8 report, study, or other independent, verifiable and documented evidence that any plant, fish or

9 wildlife was harmed by any violation of Condition I(A)(3) in the Port NPDES permit for total

10 suspended solids alleged in the Eighth Claim of the Complaint.

11 **RESPONSE:**

12 Denied. There is scientific proof of the deleterious effects on plant, fish and wildlife

13 caused by TSS.

14

15 **REQUEST FOR PRODUCTION NO. 134:** If your response to Request for Admission No. 55

16 above was anything other than an unqualified admission, please produce all documents which refer

17 or relate to any fact upon which your response was based.

18 **RESPONSE:**

19 The following documents are available for inspection at the law offices of the Center on

20 Race, Poverty & the Environment, 450 Geary Street, Suite 500, San Francisco, CA 94102, and, at

21 Teck Cominco's request and expense, the documents may be copied:

- 22 • The Port Site Violation DMRs;
 - 23 • The Exceedance Letters;
 - 24 • The Baseline Study;
 - 25 • The Lab Reports;
 - 26 • The Complaint;
 - 27 • The Answer;
- 28

1 • Plaintiff's Motion for Summary Judgment and supporting documents in *Kivalina*
 2 *Relocation Planning Committee v. Teck Cominco Alaska Incorporated*, No. A02-23 I CV(JWS),
 3 filed April 28, 2003, along with Teck Cominco's responsive brief and Teck Cominco's Answers
 4 in that case.

5 • The Complaint and Consent Decree in *United States v. Cominco Alaska Incorporated*,
 6 No. A97-267-CV (JKS).

7 • "Consumer Fact Sheet On: Lead," National Primary Drinking Water Regulations, U.S.
 8 Environmental Protection Agency: Ground Water and Drinking Water.

9 • Mason, Christopher, Biology of Freshwater Pollution, 4th edition, Pearson Education
 10 Limited, London, 2002.

11 • Memorandum from Larry Bartlett, Biologist, Corps of Engineers, to Willie Goodwin,
 12 November 8, 2000, re: informal summary and discussion of summer wildlife observations at the
 13 Red Dog Port. 004038-004042.

14 • Birge, Wesley J., "Toxicity of Sediment-Associated Metals to Freshwater Organisms:
 15 Biomonitoring Procedures," in Dickson, Kenneth, Fate and Effects of Sediment-Bound
 16 Chemicals in aquatic Systems, Pergamon Press, New York 1984.

17 • Brown, VM, "The Acute Toxicity to Rainbow Trout of Fluctuating Concentrations and
 18 Mixtures of Ammonia, Phenol and Zinc, Journal of Fish Biology, v. 1, pp.1-90 1969.

19 • Eisler, R., "Cadmium Poisoning in *Fundulus heseroc/itus* (Pisces: Cyprinodontidae)
 20 and other Marine Organisms, Journal of the Fisheries Research Board of Canada, v. 28, n.9,
 21 1971.

22 • Hawker, D.H., "Bioaccumulation of Metallic Substances and Organometallic
 23 Compounds," Bioaccumulation of Xenobiotic Compounds, CRC Press, Boca Raton, 1990.

24 • LaVelle, J.M., "Bioavailability of Lead in Mining Waster: An Oral Intrubation Study in
 25 Young Swine," Chemical Speciation and Bioavailability, v. 3, issues 3/4, Dec. 1991.

26 • Mason, Christopher, Biology of Freshwater Pollution, 4th edition, Pearson Education
 27 Limited, London, 2002.

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1 in the Complaint.

2 **RESPONSE:**

3 Denied. They may have been.

4
5 **INTERROGATORY NO. 10:** If your response to Request for Admission No. 79 above was
6 anything other than an unqualified admission, please identify each violation alleged in the Complaint
7 which you believe caused or contributed to the strange taste and colors in the drinking water as
8 alleged in paragraph 11 of the Complaint.

9 **RESPONSE:**

10 Violations of mine site permit conditions I(A)(1) for TDS (daily maximum), TDS
11 (monthly average), cyanide (daily maximum), cyanide (monthly average), cadmium (daily
12 maximum), cadmium (monthly average), and monitoring and testing; I(D)(1) for monitoring;
13 I(H)(4) for WET (daily); I(H)(5) for WET (monthly); and Compliance Order by Consent
14 limitations on TDS levels at Stations 10, 7 and 160.

15
16 **REQUEST FOR PRODUCTION NO. 148:** Please produce all documents which refer or
17 relate to any fact requested in Interrogatory No. 10 above.

18 **RESPONSE:**

19 The following documents are available for inspection at the law offices of the Center on
20 Race, Poverty & the Environment, 450 Geary Street, Suite 500, San Francisco, CA 94102, and, at
21 Teck Cominco's request and expense, the documents may be copied:

- 22 • The Mine Site Violation DMRs;
23 • The Exceedance Letters;
24 • The Baseline Study;
25 • The Lab Reports;
26 • Plaintiff's Motion for Summary Judgment and supporting documents in *Kivalina*
27 *Relocation Planning Committee v. Teck Cominco Alaska Incorporated*, No. A02-23 I CV(JWS),
28

1 filed April 28, 2003, along with Teck Cominco's responsive brief and Teck Cominco's Answers
2 in that case.

3 • The Complaint and Consent Decree in *United States v. Cominco Alaska Incorporated*,
4 No. A97-267-CV (JKS).

5 • The Transcript of the Deposition of Joyce Tsuji in *Douglas v. MolyCorp.* and in this
6 case.

7 • e-mail from Robert B. Sanders of the U. S. Army Corps of Engineers to Colleen Koenig
8 on July 31, 2001.

9 • Transcripts of the Depositions of Enoch Adams, Jerry Norton, Joseph Swan, Andrew
10 Koenig and Leroy Adams, July 2003.

11
12 **REQUEST FOR ADMISSION NO. 80:** Please admit that substances naturally occurring in the
13 Wulik River and its tributaries could have caused the strange taste and colors in the drinking
14 water alleged in paragraph 11 of the Complaint.

15 **RESPONSE:**

16 Plaintiffs admit that substances naturally occurring in the Wulik River and its tributaries
17 could have caused the "strange taste and colors" in the drinking water alleged in paragraph 11 of
18 the Complaint, as some of the chemicals Teck Cominco discharges are naturally occurring in the
19 Wulik River and its tributaries. Further, substances naturally occurring in the Wulik River and its
20 tributaries – like aquatic invertebrates – may be killed by the discharge from Red Dog and thus
21 cause the "strange taste and colors" noted in Wulik River water.

22
23 **REQUEST FOR ADMISSION NO. 81:** Please admit that certain types of bacteria, if present
24 in water, can cause odors and change of taste.

25 **RESPONSE:**

26 Admitted.

REQUEST FOR ADMISSION NO. 82: Please admit that the Red Dog Mine did not discharge any effluent on the following days: 5/13/98, 5/14/98, 5/15/98, 5/16/98, 5/17/98, 7/26/98, 7/27/98, 10/23/98, 10/24/98, 5/13/99, 5/14/99, 5/15/99, 10/13/99, 10/14/99, 10/15/99, 10/16/99, 5/19/00, 5/20/00, 5/21/00, 6/4/00, 6/5/00, 8/4/00, 10/8/00, 10/9/00, 10/10/00, 10/11/00, 5/27/01, 5/28/01, 5/29/01, 9/2/01, 9/3/01, 9/4/01, 9/5/01, 9/6/01, 9/7/01, 9/8/01, 9/9/01, 9/10/01, 9/11/01, 9/12/01, 10/11/01, 10/12/01, 10/13/01, 10/14/01, 5/23/02, 5/24/02, 5/25/02, 8/17/02, 8/18/02, 8/19/02, 9/15/02, 10/7/02.

RESPONSE:

Plaintiffs object generally to this Request for Admission because the request is vague and ambiguous, in that it does not specify what "discharge" or "effluent" mean, nor does it specify to where, if anywhere, such discharge might have occurred. Plaintiffs object to the following days — 5/13/98, 5/14/98, 5/15/98, 5/16/98, 5/17/98, 7/26/98, 7/27/98 — on the grounds of relevance, because 1) any discharges on these days were not covered by the current permit for the mine; and 2) plaintiffs are not alleging any violations of the previous mine permit. Plaintiffs object to the following days — 10/23/98, 10/24/98 — on the grounds of relevance in that there are no violations alleged in this suit from 1998. Notwithstanding these objections, and not waiving them, KRPC denies the following dates: 10/23/98, 10/24/98, 5/13/99, 5/14/99, 5/15/99, 10/13/99, 10/14/99, 10/15/99, 10/16/99, 5/19/00, 5/20/00, 5/21/00, 6/4/00, 6/5/00, 8/4/00, 10/10/00, 10/11/00, 5/27/01, 5/28/01, 5/29/01, 9/2/01, 9/3/01, 9/4/01, 9/5/01, 9/6/01, 9/7/01, 9/8/01, 9/9/01, 9/10/01, 9/11/01, 9/12/01, 10/11/01, 10/12/01, 10/13/01, 10/14/01, 5/23/02, 5/24/02, 5/25/02 — because Red Dog Mine discharged effluent into the tailings impoundment, and perhaps other places, on those days.

REQUEST FOR PRODUCTION NO. 149 : Please produce all documents which contain any facts you believe support or tend to support any claim by you that Teck Cominco enjoyed any economic benefit as result of:

1. Any alleged violation of Count I of the Complaint.

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2. Any violation of Count II of the Complaint;
3. Any violation of Count III of the Complaint;
4. Any violation of Count IV of the Complaint;
5. Any violation of Count V of the Complaint;
6. Any violation of Count VI of the Complaint;
7. Any violation of Count VII of the Complaint;
8. Any violation of Count VIII of the Complaint;
9. Any violation of Count IX of the Complaint; and
10. Any violation of Count X of the Complaint.

RESPONSE:

The following documents are available for inspection at the law offices of the Center on Race, Poverty & the Environment, 450 Geary Street, Suite 500, San Francisco, CA 94102, and, at Teck Cominco's request and expense, the documents may be copied:

- The Expert Report and Expert Rebuttal Report of Michael Kavanaugh, and the references cited therein.

- The Expert Report and Expert Rebuttal Report of Robert Fuhrman, and the references cited therein.

- The Expert Report of Gene Andrews and documents referenced therein and attached thereto; the Expert Rebuttal Report of Gene Andrews and documents referenced therein.

- Gene Andrews, et al. (1996) Effluent Treatment and Water Management for TDS Control.

- Gene Andrews, et al. (1997) Effluent Treatment and Water Management for TDS Control.

1 • Gene Andrews, et al. (1999) Update, Effluent Treatment and Water Management for
2 TDS Control.

3 • Transcripts of the Depositions of Gene Andrews, James Kulas, Mark Thompson,
4 JoAnne Bozek.
5

6 • 1998, 1999 Annual Reports of Cominco Ltd.

7 • 1997, 1998, 1999 Annual Report of Teck, Inc.

8 • 1999, 2000, 2001, 2002 and 2003 Annual Reports of Teck Cominco Ltd.

9 • Annual Financial Statements of Teck Cominco from 1994-2004.
10

11 Please also see generally Plaintiffs Response to Teck Cominco's Fourth Discovery
12 Request, which has more detailed responses on this specific topic.
13

14 REQUEST FOR PRODUCTION NO. 150 : Please produce all documents Plaintiffs intend to
15 offer into evidence at trial to support Plaintiffs allegations that Teck Cominco enjoyed economic
16 benefit as a result of any of the violations alleged in the Complaint.
17

18 **RESPONSE:**

19 See Response to Request for Production No. 149.
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Exh 3
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